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PAPER – 8: INDIRECT TAX LAWS

Question No. 1 is compulsory

Answer any **four** questions from the remaining **five** questions.

- (i) Working notes should form part of the answer.
- (ii) Wherever necessary suitable assumptions may be made and disclosed by way of note.
- (iii) All questions should be answered on the basis of the position of GST law as amended up to 31.10.2017 and customs law as amended by the Finance Act, 2017 and notifications and circulars issued till 31.10.2017.
- (iv) The GST rates for goods and services mentioned in various questions are hypothetical and may not necessarily be the actual rates leviable on those goods and services. The rates of customs duty are also hypothetical and may not necessarily be the actual rates. Further, GST compensation cess should be ignored in all the questions, wherever applicable.

Question 1

- (a) Laxmi Ltd. of Bhopal (Madhya Pradesh) is a supplier of machinery. Laxmi Ltd. has supplied machinery to PQR Enterprises in Indore (Madhya Pradesh) on 1st October, 2017. The invoice for supply has been issued on 1st October, 2017. Thus, the time of supply of machinery is 1st October, 2017. Laxmi Ltd. and PQR Enterprise are not related.

Following information is provided:

Basic price of machinery excluding all taxes but including design and engineering charges of ₹ 10,000 and loading charges of ₹ 20,000 - ₹ 20,00,000.

Laxmi Ltd. provides 2 years free warranty for the machinery. Laxmi Ltd. also provides an extended one year warranty on payment of additional charges of ₹ 1,00,000. PQR Enterprises opted for one year warranty.

Laxmi Ltd. has collected consultancy charges in relation to pre-installation planning of ₹ 10,000 and freight and insurance charges from place of removal to buyer's premises of ₹ 20,000.

Laxmi Ltd. received subsidy of ₹ 50,000 from Central Government for supplying the machinery to backward region since receiver was located in a backward region. Laxmi Ltd. also received ₹ 50,000 from the joint venture partner of PQR Enterprises for making timely supply of machinery to the recipient.

A cash discount of 1% on the basic price of the machinery is offered at the time of supply, if PQR Enterprises agrees to make the payment within 30 days of the receipt of the machinery at his premises. Discount @ 1% was given to PQR Enterprises as it agreed to make the payment within 30 days.

The machinery attracts CGST and SGST @ 18% (9% + 9%) and IGST @18%.

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Compute the CGST and SGST or IGST payable, as the case may be, on the machinery.

(10 Marks)

(b) Mr. Murthy, an unregistered person and a resident of Pune, hires the services of M/s Sun Ltd. an event management company registered in Delhi, for organising of the new product launch in Bengaluru.

(i) Determine the place of supply of services provided by M/s Sun Ltd.

(ii) What would your answer be in case the product launch takes place in Bangkok?

(iii) What would your answer be in case Mr. Murthy is a registered person and product launches take place in Bengaluru and Bangkok? (5 Marks)

(c) Niketan Industries Ltd., New Delhi has imported certain machine (by sea) from Japan.

From the following particulars furnished by it, work out the assessable value of the machine and customs duty payable by Niketan Industries Ltd. with appropriate working notes:

S. No.	Particulars	Amount in (₹)
(i)	CIF value of the machine	4,23,379.69
(ii)	Freight incurred from port of entry to Inland Container depot	25,000.00
(iii)	Unloading and handling charges paid at the place of importation	40,000.00
(iv)	Designing charges paid to Consultancy firm in Mumbai	10,000.00

1.	Basic Customs Duty leviable	10% advalorem
2.	Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is 18%.	
3.	Note: Ignore GST Compensation Cess.	

(5 Marks)

Answer

(a)

Computation of GST payable

Particulars	₹
Price of the machinery [Note 1]	20,00,000
Add: Extended warranty cost [Note 2]	1,00,000
Consultancy charges in relation to pre-installation planning [Note 4]	10,000
Freight and insurance charges [Note 3]	20,000
Subsidy received from Central Government [Note 5]	Nil
Receipts from Joint Venture of PQR Enterprises [Note 5]	50,000

Less: 1% discount on basic price* = ₹ 20,00,000 x 1% [Note 6]	(20,000)
Value of supply	21,60,000
CGST @ 9% [Note 7]	1,94,400
SGST @ 9% [Note 7]	1,94,400

Notes:

1. Laxmi Ltd. and PQR Enterprises are not related and price is assumed to be the sole consideration for the supply. Therefore, in terms of section 15(1) of the CGST Act, 2017, the value of the supply is the transaction value i.e., price actually paid or payable for the machinery by PQR Enterprises.

Design and engineering charges are includible in the value of supply as any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is so includible in terms of section 15(2)(c) of CGST Act, 2017.

Further, loading charges being incidental expenses charged by the supplier to the recipient of supply, are includible in the value as per section 15(2)(c) of the CGST Act, 2017.

2. Supply of machinery (goods) with supply of ancillary services like extended warranty, is a composite supply, the principle supply of which is the supply of machinery. [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Thus, value of such ancillary supply is includible in the value of composite supply.
3. Supply of machinery (goods) with supply of ancillary services like freight and insurance is a composite supply, the principle supply of which is the supply of machinery [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Thus, value of such ancillary supply is includible in the value of composite supply.
4. Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
5. Subsidies provided by the Central Government and State Governments are not includible in the value of supply in terms of section 15(2)(e) of the CGST Act, 2017. However, subsidy directly linked to the price received from a non-Government body is includible in the value in terms of section 15.
6. Cash discount has been given to PQR Enterprises upfront at the time of supply and thus would have been recorded in the invoice and hence, the same is excluded from the value of supply in terms of section 15(3)(a) of the CGST Act, 2017.
7. In the given case-
 - the location of the supplier is in Bhopal (Madhya Pradesh); and

- the place of supply of machinery is the location of the machinery at the time at which the movement of the same terminates for delivery to the recipient i.e., Indore (Madhya Pradesh) vide section 10(1)(a) of IGST Act, 2017.

Therefore, as per section 8(1) of IGST Act, 2017, the given supply is an intra-State supply as the location of the supplier and the place of supply are in the same State. Thus, the supply will be leviable to CGST and SGST.

**Note: It is also possible to take a view that the basic price of the machinery is ₹ 19,70,000 [₹ 20,00,000 – ₹ 10,000 – ₹ 20,000] and design and engineering charges and loading charges are added to such price. In that case, 1% of discount amount will come out to be ₹ 19,700, value of supply would be ₹ 21,60,300 and CGST and SGST would be ₹ 1,94,427 each.*

- (b) (i) As per section 12(7)(a)(ii) of IGST Act, 2017, when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Mr. Murthy] is unregistered and event is held in India, place of supply is the location where the event is actually held i.e., Bengaluru. The location of the supplier and the location of the recipient is irrelevant in this case.

- (ii) However, if product launch takes place outside India [Bangkok], the place of supply will be the location of recipient i.e., Pune.
- (iii) When service by way of organization of an event is provided to a registered person, place of supply is the location of recipient vide section 12(7)(a)(i) of IGST Act, 2017.

Therefore, if Mr. Murthy is a registered person, then in both the cases i.e., either when product launch takes place in Bengaluru or Bangkok, the place of supply will be the location of recipient i.e., Pune.

- (c) **Computation of assessable value and customs duty payable**

Particulars	₹
CIF value of machine	4,23,379.69
Unloading and handling charges at the place of importation [Note-1]	Nil
Freight from port of entry to ICD [Note-2]	Nil
Designing charges paid to consultancy firm in Mumbai [Note-3]	Nil
Assessable Value	4,23,379.69
Add: Basic customs duty (BCD) @10% (rounded off)	42,338
Add: Education cesses @3% of BCD (rounded off)	1,270
Value for computing IGST	4,66,987.69
IGST @ 18% (rounded off)	84,058

Total duty and tax payable = [₹ 42,338 + ₹ 1,270 + ₹ 84,058]	1,27,666
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Notes:-

1. Only charges incurred for delivery of goods “to” the place of importation are includible in the transaction value vide rule 10(2)(a) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The loading, unloading and handling charges associated with the delivery of the imported goods “at” the place of importation are not to be added to the CIF value of the goods.
2. In case of goods imported by sea and transshipped to another custom station in India, the cost of transport associated with such transshipment is excluded in terms of sixth proviso to rule 10(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
3. Rule 10(1)(b)(iv) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that only the design and engineering work undertaken elsewhere than in India is includible in the assessable value.

Question 2

- (a) Mr. Nagarjun, a registered supplier of Chennai, has received the following amounts in respect of the activities undertaken by him during the month ended on 30th September, 2017:

S. No.	Particulars	Amount (₹)
(i)	Amount charged for service provided to recognized sports body as selector of national team.	50,000
(ii)	Commission received as an insurance agent from insurance company.	65,000
(iii)	Amount charged as business correspondent for the services provided to the urban branch of a nationalized bank with respect to savings bank accounts.	15,000
(iv)	Service to foreign diplomatic mission located in India.	28,000
(v)	Funeral services.	30,000

He received the services from unregistered goods transport agency for his business activities relating to serial numbers (i) to (iii) above and paid freight of ₹ 45,000 (his aggregate turnover of previous year was ₹ 9,90,000).

Note: All the transactions stated above are intra-State transactions and also are exclusive of GST.

You are required to calculate gross value of taxable supply on which GST is to be paid by Mr. Nagarjun for the month of September, 2017. Working notes should form part of your answer. **(7 Marks)**

- (b) Prem is running a consulting firm and also a fancy store, registered under the same PAN number. Turnover of the fancy store is ₹ 65,00,000 and receipt of consultancy firm is ₹ 10,00,000 in the preceding financial year.

You are required to provide answers with supporting explanatory note for each answer to the following questions:

- (i) Is Prem eligible for composition scheme under CGST Act?
 (ii) Whether it is possible for Prem to opt for composition scheme only for fancy store?
 (iii) If Prem is running a restaurant with turnover of ₹ 65,00,000 instead of consultancy firm as well as a fancy store, would he be eligible for composition scheme? **(3 Marks)**
- (c) Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties.

Determine the place of supply in the transactions below as per provisions of GST law in the following independent situations:

Case	Location of Mr. Mahendra Goyal	Location of Mr. Harish Jain	Properties situated at
I	Delhi	Mumbai	New York (USA)
II	Delhi	New York	Paris (France)

Explain the relevant provisions of law to support your conclusions. **(5 Marks)**

- (d) What is the warehousing period for capital goods and other goods in the case of EOU, EHTPs, STPs, and for warehouses where manufacture/ other operations are permitted under section 65 of Customs Act, 1962 and also in other cases? Can the warehousing period be extended? **(5 Marks)**

Answer

- (a) Computation of gross value of taxable supply on which GST is to be paid by Mr. Nagarjun

Particulars	Amount (₹)
Supplies on which Mr. Nagarjun is liable to pay GST under forward charge	
Amount charged for service provided to recognized sports body as selector of national team [Note 1]	50,000

Commission received as an insurance agent from insurance company [Note 2]	Nil
Amount charged as business correspondent for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 3]	15,000
Services provided to foreign diplomatic mission located in India [Note 4]	28,000
Funeral services [Note 5]	Nil
Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge	
Services received from GTA [Note 6]	<u>45,000</u>
Value of taxable supply on which GST is to be paid	1,38,000

Notes:

- (1) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, service provided as selector of team is liable to GST.
 - (2) Though commission for providing insurance agent's services is liable to GST, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017. Thus, Mr. Nagarjun will not be liable to pay GST on such commission.
 - (3) Services provided by business correspondent to a banking company with respect to accounts in its rural area branch are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017. Thus, such services provided in respect of urban area branch will be taxable.
 - (4) While services provided by a foreign diplomatic mission located in India are exempt from GST vide Exemption Notification No. 12/2017 CT(R) dated 28.06.2017, services provided to such mission are taxable.
 - (5) Funeral services being covered in entry 4 of Schedule III to CGST Act, 2017 are not a supply and thus, are outside the ambit of GST.
 - (6) GST on services provided by a GTA (not paying tax @ 12%) to *inter alia* a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of Notification No. 13/2017 CT(R) dated 28.06.2017. The turnover of previous year is irrelevant in this case.
- (b) (i) No, Prem is not eligible for composition scheme as he is providing services as a consulting firm. Section 10(2)(a) of the CGST Act, 2017 provides that a registered person cannot opt for composition scheme if he is engaged in the supply of services

other than restaurant services.

- (ii) No, it is not possible for Prem to opt for composition scheme only for fancy store. All the registrations under the same PAN have to opt for composition scheme in terms of proviso to section 10(2) of the CGST Act, 2017. Since the supply of consultancy service is ineligible for composition scheme, supply of goods in fancy store too becomes ineligible for composition scheme.
- (iii) No, Prem is not eligible for composition scheme if he is running a restaurant with turnover of ₹ 65,00,000 instead of consultancy firm as well as fancy store. Section 10(1) of the CGST Act, 2017 read with *Notification No. 46/2017 CT dated 13.10.2017* provides that an eligible registered person whose aggregate turnover in the preceding financial year did not exceed ₹ 1 crore may opt to pay tax under composition levy.

Therefore, even though Prem provides restaurant service, which is an eligible service for composition levy, since his aggregate turnover [₹ 65 lakh for fancy store + ₹ 65 lakh for restaurant service] in the preceding financial year exceeds ₹ 1 crore, Prem is not eligible for composition levy.

(c) Case I

As per section 12(3) of the IGST Act, 2017, where both the service provider and the service recipient are located in India, the place of supply of services directly in relation to an immovable property, including services provided by interior decorators is the location of the immovable property. However, if the immovable property is located outside India, the place of supply is the location of the recipient.

Since in the given case, both the service provider (Mr. Mahendra Goyal) and the service recipient (Mr. Harish Jain) are located in India and the immovable property is located outside India (New York), the place of supply will be the location of recipient i.e., Mumbai.

Case II

As per section 13(4) of the IGST Act, 2017 where either the service provider or the service recipient is located outside India, the place of supply of services directly in relation to an immovable property including services of interior decorators is the location of the immovable property.

Since in the given case, service recipient (Mr. Harish Jain) is located outside India (New York), the place of supply will be the location of immovable property i.e., Paris (France).

(d)

Class of goods	Time for which the goods may remain warehoused
In case of EOUs, EHTPs, STPs and warehouses where manufacture or other operations are permitted under section 65 of the Customs Act, 1962	

(i) Capital goods	Till the clearance of such goods from warehouse [Section 61(1)(a) of the Customs Act, 1962]
(ii) Other goods	Till the consumption or clearance of such goods [Section 61(1)(b) of the Customs Act, 1962]
Goods other than above	Till the expiry of 1 year from the date of order permitting removal of goods from a customs station for deposit in warehouse [Section 61(1)(c) of the Customs Act, 1962]
<p>First proviso to section 61(1) of the Customs Act, 1962 provides that in case of goods other than above, the Principal Commissioner/Commissioner of Customs on sufficient cause being shown, may extend the warehousing period up to 1 year at a time.</p> <p>However, if such goods are likely to deteriorate, extended warehousing period may be reduced to such shorter period as may be deemed fit in terms of second proviso to section 61(1) of the Customs Act, 1962.</p>	

Question 3

- (a) ABC Company Ltd. of Bengaluru is a manufacturer and registered supplier of machine. It has provided the following details for the month of November, 2017.

Details of GST paid on inward supplies during the month:

Items	GST paid (₹)
Health insurance of factory employees.	20,000
Raw materials for which invoice has been received and GST has also been paid for full amount but only 50% of material has been received, remaining 50% will be received in next month.	18,000
Work contractor's service used for installation of plant and machinery.	12,000
Purchase of manufacturing machine directly sent to job worker's premises under challan.	50,000
Purchase of car used by director for the business meetings only.	25,000
Outdoor catering service availed for business meetings.	8,000

ABC Company Ltd. also provides service of hiring of machines along with man power for operation. As per trade practice machines are always hired out along with operators and also operators are supplied only when machines are hired out.

Receipts on outward supply (exclusive of GST) for the month of November, 2017 are as follows:

Items	GST paid (₹)
Hiring receipts for machine	5,25,000
Service charges for supply of man power operators	2,35,000

Assume all the transactions are inter State and the rates of IGST to be as under:

- (i) Sale of machine 5%
- (ii) Service of hiring of machine 12%
- (iii) Supply of man power operator service 18%

Compute the amount of input tax credit available and also the net GST payable for the month of November 2017 by giving necessary explanations for treatment of various items.

Note: Opening balance of input tax credit is Nil. **(10 Marks)**

- (b) Kamal & Co. manufactures customized products at its unit situated in Rajasthan. Cost of production for Kamal & Co. for 1000 products is ₹ 20,00,000. These products require further processing before sale, and for this purpose products are transferred from its Rajasthan unit to its another unit in Punjab. The Punjab unit, apart from processing its own products, engages in processing of similar products of other persons who supply the products of the same kind and quality and thereafter sells these processed products to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of its Punjab unit. Products of the same kind and quality are supplied in lots of 1000 each time by another manufacturer located in Punjab. The price of such goods is ₹ 19,00,000. Determine the value of 1000 products supplied by Kamal & Co. to its Punjab unit as per the provisions of CGST Act, 2017. **(5 Marks)**
- (c) A consignment containing many items was imported by Suraj. On examination of the goods, it was found that he had made misdeclaration in respect of all the items. You are required to indicate the penalty imposable under section 112 of Customs Act, 1962 in each case given below. Values are exclusive of customs duties. Basic Customs Duty is 10%, Education cesses – 3%. No other tax is attracted on these imports.
- (1) Non-prohibited dutiable goods and the value is mis-declared as ₹ 10,00,000 instead of ₹ 11,50,000.
 - (2) In the case at serial number 1, if the importer pays duty and interest within 30 days from the date of communication of the order.
 - (3) The value of imported goods declared is higher than the value determined by Customs. Value determined by Customs is ₹ 15,00,000 but the value declared by Suraj is ₹ 20,00,000.
 - (4) The value of prohibited goods was declared as 20,00,000 and the actual value determined was ₹ 15,00,000.

- (5) *The imported goods are prohibited goods, which were declared by Suraj to be some other goods valued ₹ 15,00,000 and actual value is found to be ₹ 20,00,000.*

(5 Marks)

Answer

(a) **Computation of net GST payable by ABC Company Ltd.**

Particulars	GST payable (₹)
Gross GST liability [Refer working note (2) below]	91,200
Less: Input tax credit [Refer working note (1) below]	<u>62,000</u>
Net GST liability	29,200

Working Notes:

- (1) **Computation of Input Tax Credit (ITC) available with ABC Company Ltd. in the month of November 2017**

Particulars	GST (₹)
Health insurance of factory employees [Note – 1]	Nil
Raw material received in factory [Note – 2]	Nil
Work's contractor's service used for installation of plant and machinery [Note -3]	12,000
Manufacturing machinery directly sent to job worker's premises under challan [Note -4]	50,000
Purchase of car used by director for business meetings only [Note -5]	Nil
Outdoor catering service availed for business meetings [Note -6]	<u>Nil</u>
Total ITC available	62,000

Notes:

- ITC of health insurance is blocked in the given case since said services are not notified by Government as obligatory for employer to provide to its employees under any law - in terms of section 17(5)(b)(iii) of the CGST Act, 2017.
- Where the goods against an invoice are received in lots/instalments, ITC is allowed upon receipt of the last lot/instalment vide first proviso to section 16(2) of the CGST Act, 2017. Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second instalment in December, 2017.
- Section 17(5)(c) of CGST Act, 2017 provides that ITC on works contract services is blocked when supplied for construction of immovable property (other than

plant and machinery) except when the same is used for further supply of works contract service.

Though in this case, the works contract service is not used for supply of works contract service, ITC thereon will be allowed since such services are being used for installation of plant and machinery.

4. ITC on capital goods directly sent to job worker's premises under challan is allowed in terms of section 19(5) of CGST Act, 2017 read with rule 45(1) of CGST Rules, 2017.
5. Section 17(5)(a) of CGST Act, 2017 provides that ITC on motor vehicles is allowed only when the same are used:
 - (1) for making taxable supply of- (i) further supply of such vehicles, (ii) transportation of passengers, (iii) imparting training on driving, flying, navigating such vehicles and
 - (2) for transportation of goods.

Since ABC Company Ltd is a supplier of machine and it does not use the car for transportation of goods, ITC thereon will not be available.

6. Section 17(5)(b)(i) of CGST Act, 2017 provides that ITC on outdoor catering is blocked except where the same is used for making further supply of outdoor catering or as an element of a taxable composite or mixed supply.

Since ABC Company Ltd is a supplier of machine, ITC thereon will not be available.

(2) Computation of gross GST liability

	Value received (₹)	Rate of GST	GST payable (₹)
Hiring receipts for machine	5,25,000	12%	63,000
Service charges for supply of manpower operators	2,35,000	12%	28,200
Gross GST liability			91,200

Note:

Since machine is always hired out along with operators and operators are supplied only when the machines are hired out, it is a case of composite supply, wherein the principal supply is the hiring out of machines [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Therefore, service of supply of manpower operators will also be taxed at the rate applicable for hiring out of machines (principal supply), which is 12%, in terms of section 8(a) of the CGST Act, 2017.

Note: In the above answer, the amounts given in the second table of the question have been taken as "Receipts on outward supply". If the same are taken as GST paid, the gross GST liability will be ₹ 7,60,000 (5,25,000 + 2,35,000) and the same can be directly set off against input tax credit available. Thus, net GST liability will work out to ₹ 6,98,000 (7,60,000 - 62,000).

- (b) As per section 25(4) of the CGST Act, 2017, a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act. Therefore, units of Kamal & Co. in Rajasthan and Punjab are distinct persons.

As per rule 28 of CGST Rules, 2017, the value of the supply of goods between distinct persons, other than where the supply is made through an agent, shall –

- (a) be the open market value of such supply;
- (b) if open market value is not available, be the value of supply of goods of like kind and quality;
- (c) if value cannot be determined under the above methods, be cost of the supply plus 10% mark-up or be determined by other reasonable means, in that sequence.

In the given case, open market value of the 1000 products being supplied to Punjab unit is not available since the supplier manufactures customised products. Therefore, value of 1000 products supplied by Rajasthan unit of Kamal & Co. to Punjab unit will be the value of the goods of like kind and quality supplied to Punjab unit by other customers which is ₹ 19,00,000.

Since goods are not supplied as such by the Punjab unit, goods cannot be valued @ 90% of the price charged for the supply of like goods by the Punjab unit to its unrelated customers in terms of first proviso to rule 28 of CGST Rules, 2017.

Further, if Punjab unit is entitled for full ITC, the value declared in the invoice of Rajasthan unit will be deemed to be the open market value of the goods vide second proviso to rule 28 of CGST Rules, 2017.

- (c) As per section 112 of the Customs Act, 1962:-
- (1) Penalty imposable in case of non-prohibited dutiable goods is penalty not exceeding:
 - (i) 10% of the duty sought to be evaded – ₹ 1,545 [10% of {(₹ 11,50,000 - ₹ 10,00,000) × 10.30%}]
 - or
 - (ii) ₹ 5,000,
 whichever is higher – ₹ 5,000.

- (2) Where duty adjudicated and interest thereon is paid within 30 days from the date of communication of order, penalty liable to be paid under section 112 shall be reduced to 25% of the penalty so determined i.e. ₹ 1,250 [25% of ₹ 5,000].
- (3) Penalty imposable on goods whose value has been over declared is penalty not exceeding:
- (i) Difference between declared value and value determined by customs – ₹ 5,00,000 [₹ 20,00,000 - ₹ 15,00,000]
- or
- (ii) ₹ 5,000,
whichever is higher – ₹ 5,00,000.
- (4) Penalty imposable on prohibited goods whose value has been over-declared is penalty not exceeding:
- (i) Value of the goods – ₹ 15,00,000
- (ii) Difference between declared value and value determined by customs – ₹ 5,00,000 [₹ 20,00,000 - ₹ 15,00,000]
- or
- (ii) ₹ 5,000,
whichever is higher – ₹ 15,00,000.
- (5) Penalty imposable on prohibited goods whose value has been under-declared is penalty not exceeding:
- (i) Value of the goods = ₹ 20,00,000
- or
- (ii) ₹ 5,000,
whichever is higher – ₹ 20,00,000.

Question 4

- (a) *Pari & Sons is an unregistered dealer. On 10th August, 2017 aggregate turnover of Pari & Sons exceeded ₹ 20,00,000. The firm applied for registration on 27th August, 2017 and was granted the registration certificate on 1st September, 2017.*

Under CGST Rules, 2017, you are required to advise Pari & Sons as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of revised tax invoices. **(5 Marks)**

- (b) *With the help of the following information in the case of M/s Jayant Enterprises, Jaipur (Rajasthan) for the year 2017-18, determine the aggregate turnover for the purpose of registration under the CGST Act, 2017.*

S. No.	Particulars	Amount (₹)
(i)	Sale of diesel on which Sale Tax (VAT) is levied by Rajasthan	1,00,000

	Government.	
(ii)	Supply of goods, after completion of job work, from the place of Jayant Enterprises directly by principal.	3,00,000
(iii)	Export supply to England (U.K.)	5,00,000
(iv)	Supply to its own additional place of business in Rajasthan.	5,00,000
(v)	Outward supply on which GST is to be paid by recipient under reverse charge.	1,00,000

All the above amounts are excluding GST.

You are required to provide reasons for treatment of various items given above. **(5 Marks)**

- (c) XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 01-11-2017 under section 73 of the CGST Act, 2017 wherein it was decided as follows:

Particulars

CGST and SGST due (Total)	₹ 6,00,000
Interest	@ 18% p.a. for number of delayed days
Penalty	₹ 60,000

The assessee filed an appeal before the Appellate Authority on 26-11- 2017.

Case I

How much the company has to pay as pre-deposit of duty under section 107(6) of the CGST Act, 2017?

Case II

Whether your answer would be different if the assessee appeals only against part of the demanded amount say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 arising from the said order. **(5 Marks)**

- (d) An importer imported a consignment weighing 10,000 tons. The importer filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them. The importer thereafter found, on taking delivery from the Port Trust Authorities i.e., before the clearance for home consumption, that only 9,000 tonnes of inputs were available at the docks although he had paid duty for the entire 10,000 tonnes.

There was no short-landing of cargo. The short- delivery of 10,000 tonnes was also substantiated by the Port Trust Authorities, who gave a weighment certificate to the importer.

On filing a representation to the Customs Department, the importer has been directed in writing to justify as to which provision of the Customs Act, 1962 governs his claim for remission of duty on the 10,000 tonnes not delivered by the Port Trust.

Examine the issue and tender your opinion as per law, giving reasons. (5 Marks)

Answer

- (a) Section 22(1) of the CGST Act, 2017 provides that every supplier is liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds ₹ 20 lakh.

Section 25(1) of the CGST Act, 2017 provides that a supplier whose aggregate turnover in a financial year exceeds ₹ 20 lakh in a State/UT is liable to apply for registration within 30 days from the date of becoming liable to registration (i.e., the date of crossing the threshold limit of ₹ 20 lakh).

Where the application is submitted within the said period, the effective date of registration is the date on which the person becomes liable to registration vide rule 10(2) of the CGST Rules, 2017; otherwise it is the date of grant of registration in terms of rule 10(3) of the CGST Rules, 2017.

In the given case, since Pari & Sons have applied for registration on 27.08.2017 which is within 30 days from the date of becoming liable to registration (10.08.2017), its effective date of registration is 10.08.2017.

Further, every registered person who has been granted registration with effect from a date earlier than the date of issuance of registration certificate to him, may issue revised tax invoices in respect of taxable supplies effected during this period within 1 month from the date of issuance of registration certificate [Section 31(3)(a) of the CGST Act, 2017 read with rule 53(2) of CGST Rules, 2017].

In view of the same, Pari & Sons may issue revised tax invoices against the invoices already issued during the period between effective date of registration (10.08.2017) and the date of issuance of registration certificate (01.09.2017), on or before 01.10.2017.

- (b) **Computation of aggregate turnover of M/s Jayant Enterprises for the FY 2017-18**

Particulars	₹
Supply of diesel on which Sales Tax (VAT) is levied by Rajasthan Government [Note-1]	1,00,000
Supply of goods, after the completion of job work, from the place of Jayant Enterprises, directly by the principal [Note-2]	Nil
Export supply to England [Note-3]	5,00,000

Supply to its own additional place of business in Rajasthan ¹ [Note-4]	Nil
Outward supply on which GST is to be paid by recipient under reverse charge [Note-5]	<u>1,00,000</u>
Aggregate turnover	<u>7,00,000</u>

Notes:-

1. As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, supply of diesel, being a non-taxable supply, is an exempt supply and exempt supply is specifically includible in aggregate turnover in terms of section 2(6) of the CGST Act, 2017.
2. Supply of goods after completion of job work by a registered job worker shall be treated as the supply of goods by the principal in terms of explanation (ii) to section 22 of the CGST Act, 2017.
3. Export supplies are specifically includible in the aggregate turnover in terms of section 2(6) of the CGST Act, 2017.
4. Supply made without consideration to units within the same State (under same registration) is a not a supply and hence not includible in aggregate turnover.
5. Outward supplies taxable under reverse charge would be part of the “aggregate turnover” of the supplier of such supplies. Such turnover is not included as turnover in the hands of recipient.

Section 22(1) of the CGST Act, 2017 provides that a supplier whose aggregate turnover in a financial year exceeds ₹ 20 lakh [₹10 lakh in Special Category States other than Jammu and Kashmir] in a State/UT is liable to be registered.

The applicable turnover limit for registration, in the given case, will be ₹ 20 lakh as Rajasthan is not a Special Category State. Although, the aggregate turnover of M/s Jayant Enterprises does not exceed ₹ 20 lakh, it is compulsorily required to register in terms of section 24(i) of the CGST Act, 2017 irrespective of the turnover limit as it is engaged in making inter-State supplies in the form of exports to England.

- (c) Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed before Appellate Authority, unless the appellant pays:-
- (a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
 - (b) 10% of remaining tax in dispute arising from the impugned order.

¹ The above solution has been worked out on the assumption that supply to another place of business is without consideration (as per general business practices).

Thus, in Case-I, XY Company has to make a pre-deposit of 10% of ₹ 6,00,000, which is ₹ 60,000 assuming that XY Company disagrees with the entire tax demanded.

However, in Case-II, since XY Company admits the tax liability of ₹ 2,00,000 and disputes the tax demanded of only ₹ 4,00,000, it has to make a pre-deposit of:

- (i) ₹ 2,00,000 + ₹ 20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and
- (ii) 10% of ₹ 4,00,000 which is ₹ 40,000.

- (d) As per section 23(1) of the Customs Act, 1962, where it is shown to the satisfaction of Assistant or Deputy Commissioner that any imported goods have been lost or destroyed, otherwise than as a result of pilferage at any time before clearance for home consumption, the Assistant or Deputy Commissioner shall remit the duty on such goods. Therefore, duty shall be remitted only if loss has occurred before clearance for home consumption.

In the given case, it is apparent from the facts that quantity of inputs received in India was 10,000 tonnes and 1,000 tonnes thereof was lost when it was in custody of Port Authorities i.e., before clearance for home consumption was made.

Further, the loss of 1,000 tonnes of inputs cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".

Hence, the aforesaid provisions of law justify the importer's claim for remission of duty.

Note: The words "short-delivery of 10,000 tonnes" in the question may be read as "short-delivery of 1,000 tonnes".

Question 5

- (a) Examine the implications as regards the bailability and quantum of punishment on prosecution, in respect of the following cases pertaining to the period December, 2017 under CGST Act, 2017;

- (i) 'X' collects ₹ 245 lakh as tax from its clients and deposits ₹ 241 lakh with the Central Government. It is found that he has falsified financial records and has not maintained proper records.
- (ii) 'Y' collects ₹ 550 lakh as tax from its clients but deposits only ₹ 30 lakh with the Central Government.

What will be the implications with regard to punishment on prosecution of 'X' and 'Y' for the offences? What would be the position, if 'X' and 'Y' repeat the offences?

It may be assumed that offences are proved in the court.

(5 Marks)

- (b) From the details given below determine the maximum amount of fine in lieu of confiscation leviable under section 130 of CGST, Act, 2017 on:

- (i) The goods liable for confiscation.

(ii) On the conveyance used for carriage of such goods.

Details are as follows:

Cost of the goods for owner before GST	15,00,000
Market Value of Goods	20,00,000
GST on such goods	3,60,000

You are also required to explain relevant legal provisions in brief.

(5 Marks)

(c) Mr. Anand Kumar, a regular taxpayer, filed his return of outward supply (GSTR-1) for the month of August, 2017 before the due date. Later on, in February, 2018 he discovered error in the GSTR-1 return of August 2017 already filed and wants to revise it.

You are required to advise him as to the future course of action to be taken by him according to statutory provisions.

(5 Marks)

(d) Indicate five benefits available to "Status Holders" under the reward scheme of Foreign Trade Policy 2015-2020. There is no need to define the term "status holder".

(5 Marks)

Answer

(a) (i) As per section 132(1)(d)(iii) of the CGST Act, 2017, failure to pay any amount collected as tax beyond 3 months from due date of payment is punishable with specified imprisonment and fine provided the amount of tax evaded exceeds at least ₹ 100 lakh. Therefore, failure to deposit ₹ 4 lakh collected as tax by 'X' will not be punishable with imprisonment.

Further, falsification of financial records by 'X' is punishable with imprisonment up to 6 months or with fine or both vide section 132(1)(f)(iv) of the CGST Act, 2017 and the said offence is bailable in terms of section 132(4) of the CGST Act, 2017 assuming that falsification of records is with an intention to evade payment of tax due under the CGST Act, 2017.

(ii) Failure to pay any amount collected as tax beyond 3 months from due date is punishable with imprisonment upto 5 years and with fine, if the amount of tax evaded exceeds ₹ 500 lakh in terms of section 132(1)(d)(i) of the CGST Act, 2017.

Since the amount of tax evaded by 'Y' exceeds ₹ 500 lakh (₹ 550 lakh - ₹ 30 lakh), 'Y' is liable to imprisonment upto 5 years and with fine. It has been assumed that amount of ₹ 520 lakh collected as tax is not paid to the Government beyond 3 months from the due date of payment of tax. Further, the imprisonment shall be minimum 6 months in the absence of special and adequate reasons to the contrary to be recorded in the judgment vide section 132(3) of the CGST Act, 2017. Such offence is non-bailable in terms of section 132(5) of the CGST Act, 2017.

If 'X' and 'Y' repeat the offence, they shall be punishable for second and for every subsequent offence with imprisonment upto 5 years and with fine in terms of section 132(2) of the CGST Act, 2017. Such imprisonment shall also be minimum 6 months

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in the absence of special and adequate reasons to the contrary to be recorded in the judgment.

- (b) (i) As per section 130(2) of the CGST Act, 2017, in case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is the market value of the goods confiscated, less the tax chargeable thereon.

Therefore, the fine leviable = ₹ 20,00,000 - ₹ 3,60,000 = ₹ 16,40,000

The aggregate of fine and penalty shall not be less than the amount of penalty leviable under section 129(1).

- (ii) In case of conveyance used for carriage of such goods and liable for confiscation, the maximum amount of fine leviable in lieu of confiscation is equal to tax payable on the goods being transported thereon [Third proviso to section 130(2) of the CGST Act, 2017].

Therefore, the fine leviable = ₹ 3,60,000

- (c) The mechanism of filing revised return for any correction of errors/omission is not available under GST. The rectification of errors/omission is allowed in the subsequent returns.

Therefore, Mr. Anand Kumar who discovered an error in GSTR-1 for August, 2017, cannot revise it. However, he should rectify said error in the GSTR-1 filed for February, 2018 and should pay the tax and interest, if any, in case there is short payment, in the return to be furnished for February, 2018. The error can be rectified by furnishing appropriate particulars in the "Amendment Tables" contained in GSTR-1.

However, as per section 37(3) of the CGST Act, 2017, no rectification of details furnished in GSTR-1 shall be allowed after:

- (i) filing of monthly return/ GSTR-3 for the month of September following the end of the financial year to which such details pertain or
- (ii) filing of the relevant annual return
- whichever is earlier.

- (d) The benefits available to Status holders are as under:

- (a) Authorization and custom clearances for both imports and exports on self-declaration basis.
- (b) Fixation of Input Output Norms (SION) on priority i.e. within 60 days.
- (c) Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels.
- (d) Exemption from furnishing of Bank Guarantee for Schemes under FTP unless otherwise specified.
- (e) Two Star Export Houses and above are permitted to establish export warehouses.

- (f) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.

[Note : Any of the above five points may be mentioned.]

Question 6

- (a) Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017? **(5 Marks)**
- (b) State five cases where refundable amount shall be paid to the applicant, instead of being credited to Consumer Welfare Fund under CGST Act, 2017. **(5 marks)**
- (c) Explain the provisions relating to liability for GST in case of company in liquidation (section 88 of the CGST Act, 2017). **(5 Marks)**

Candidates are required to answer either 6(d) or 6(e) and not both.

- (d) State the salient features of "Deferred duty payment facility" with reference to Customs Act, 1962 and rules thereunder. **(5 Marks)**

OR

- (e) An importer filed a bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of ₹ 10,000 for late filing of the bill of entry. Since, importer wanted to clear the goods urgently, he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Can bill of entry be filed in advance? Examine the issue regarding period available for filing bill of entry in the light of relevant statutory provisions? **(5 Marks)**

Answer

- (a) Assessment order passed by the proper officer may be withdrawn in following cases:-
- (i) **Assessment of non-filers of returns**-The best judgement order passed by the proper officer under section 62 of the CGST Act shall automatically stand withdrawn where a registered person files a valid return within 30 days of the service of the best judgment assessment order. However, the liability for payment of interest under section 50(1) of the CGST Act, 2017 or for payment of late fee under section 47 of the CGST Act, 2017 shall continue.
- (ii) **Summary assessment**- As per section 64(2) of the CGST Act, 2017, a taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within 30 days of the date of receipt of the order.

If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of the CGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.

- (b) Section 54(8) of the CGST Act, 2017 provides that the refundable amount shall be paid to the applicant, instead of being credited to the Consumer Welfare Fund, if such amount is relatable to —
- (a) refund of tax paid on zero-rated supplies of goods and/or services or on inputs or input services used in making such zero-rated supplies;
 - (b) refund of unutilized ITC in case of zero rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;
 - (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
 - (d) refund of tax paid on a transaction treating it to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;
 - (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
 - (f) the tax or interest borne by notified class of applicants.

[Note: Any of the above five points may be mentioned.]

- (c) The provisions relating to liability for GST in case of company in liquidation provided under section 88 of the CGST Act, 2017 are:-
- Where any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as a liquidator/receiver of assets of a company shall give the intimation of his appointment to the Commissioner within 30 days of his appointment.
 - The commissioner shall ascertain the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.
 - He shall communicate the details to the liquidator within 3 months of the receipt of intimation of appointment of liquidator.
 - When any private company is wound up and any tax, interest or penalty determined under the CGST Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty.
 - However, director shall not be liable if he proves to the satisfaction of the Commissioner that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
- (d) The salient features of “Deferred duty payment facility” are as under:-
- Under section 47 of the Customs Act, 1962, the Central Government has permitted

importers certified under Authorized Economic Operator programme as Authorized Economic Operator - AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty. AEO means Authorized Economic Operator certified by the Directorate General of Performance Management under CBEC.

- An eligible importer intending to avail the benefit of deferred payment shall intimate to the Principal Commissioner/Commissioner of Customs, having jurisdiction over the port of clearance, his intention to avail the said benefit who on being satisfied with the eligibility of the importer will allow him to pay the duty by due dates.
- **Due dates for deferred payment of import duty—**

S. No.	Goods corresponding to Bill of Entry returned for payment from	Due date of payment of duty (excluding holidays)
1.	1 st day to 15 th day of any month	16 th day of that month
2.	16 th day till the last day of any month other than March	1 st day of the following month
3.	16 th day till the 31 st day of March	31 st March

- The eligible importer shall pay the duty electronically except where Assistant/Deputy Commissioner of Customs allow payment by any other mode for reasons to be recorded in writing.
- If there is default in payment of duty in full by due date more than once in 3 consecutive months, deferred duty payment facility will not be allowed unless the duty with interest has been paid in full.
- The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the Bill of Entry.

[Note: Any of the five points stated above may be mentioned.]

- (e) Yes, charges are payable for late filing of bill of entry if an importer fails to present the bill of entry before the end of the next day following the day (excluding holidays) on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing, and the proper officer is satisfied that there was no sufficient cause for such delay [Section 46(3) of the Customs Act, 1962].

Yes, a bill of entry can be filed in advance. It can be presented within 30 days of the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India vide proviso to section 46(3) of the Customs Act, 1962.

In the given case also, the time period as described above will be available - with reference to the date of arrival of vessel/aircraft - for filing the bill of entry.

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